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# The State as Trafficker: How Society Becomes Complicit in Child Sex Trafficking Through its State Institutions

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*Seton Hall Law*

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**THE STATE AS TRAFFICKER:**  
**How Society Becomes Complicit in Child Sex Trafficking**  
**Through its State Institutions**

Anne M. Collart

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## I. Introduction

Human trafficking is a familiar and universally abhorred practice, the current common understanding of which evokes images in the American psyche of vulnerable foreign nationals smuggled across US borders to be exploited by unscrupulous people. Whether the term brings to mind day laborers from South America being ferretted over the Mexican-US border, or Eastern European and Southeast Asian youths being sold into brothels in some seedy area of town, it almost certainly does not conjure up an image of the sixteen year old foster care runaway who takes off to live with her “boyfriend,” a man who has been hanging around outside her group home and who turns out to be a pimp, putting her out to work on the streets for him every night.

While we’d like to believe that sex trafficking is restricted to the past or less well-off areas of the world, the reality is that human trafficking happens every day within our borders, and it happens to American children.<sup>1</sup> A 2011 report by the International Organization for Adolescents (the “IOFA”) identified thousands of victims of the sex trade in the State of Illinois alone – all of whom were runaway youth with U.S. citizen status.<sup>2</sup> Another study in Illinois showed that 16,000 women and girls engage in prostitution in the Chicago metro area.<sup>3</sup> While this number includes both minors and adults, the research showed that over 60% entered the trade before the age of 18.<sup>4</sup> Nationwide, the best estimates suggest that at least 100,000 American children are victimized each year through the practice of child prostitution.<sup>5</sup> However

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<sup>1</sup> *Building Child Welfare Response to Child Trafficking*, Center for the Human Rights for Children, Loyola University, Chicago, International Organization for Adolescents (IOFA), 18, 2011. (The IOFA and Shared Hope International Reports provide the most current data on domestic minor sex trafficking, and for this reason are cited extensively throughout this paper.)

<sup>2</sup> *Id.* at 26.

<sup>3</sup> Raphael, Jody and Shapiro, Deborah L., *Sisters Speak Out: The Lives and Needs of Prostituted Women in Chicago – A Research Study*, Center for Impact Research, 8, 13, (2002) (only 3.2% of the women studied were not U.S. citizens or legal permanent residents; *See Id.* at 7).

<sup>4</sup> *Id.* at 8, 13.

<sup>5</sup> *The National Report on Domestic Minor Sex Trafficking*, Shared Hope International, 4, (May 2009).

this number can range as high as 300,000, which is the most common estimate cited by the US Department of Justice and child protection agencies.<sup>6</sup>

Given the increased awareness and research on the practice of human trafficking and its target victims, the state, through its inaction, is becoming complicit in trafficking by not properly funding and providing services for children in this country who are victims of child sex trafficking at the hands of pimps. While it is possibly the most commonly used term in the everyday vernacular for this type of activity, this paper avoids using the term “teenage prostitute” wherever possible for many of the same reasons cited by Cheryl Hanna in her 2002 article on Christal Jean Jones and the domestic trafficking of girls for the commercial sex industry.<sup>7</sup> While often used to describe youth, generally above the age of 12 or 13 and engaged in the sex trade, the term “blurs the distinction between children who are used for profit, and adult prostitutes who may also have few options, but at least arguably have the emotional and physical maturity to exercise them in more autonomous ways than do teenage girls.”<sup>8</sup> This view of exploited children (particularly those in their teens who are minorities and poor) as “teenage prostitutes” often attributes an agency and maturity to these young girls (and boys, to the extent they are involved in the sex trade) beyond their years and misses their true status as victims of sex trafficking. Indeed, Hanna has argued that adolescent girls who survive by having sex are not considered victims unless they end up “murdered and on front page of a small town newspaper.”<sup>9</sup> Rather, society tends to blame the “teenage prostitute” for getting herself into such

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<sup>6</sup> *Id.*; Julian Sher, *Somebody's Daughter, The Hidden Story of America's Prostituted Children and the Battle to Save Them*, 11 (2011).

<sup>7</sup> Cheryl Hanna, *Somebody's Daughter: The Domestic Trafficking of Girls for the Commercial Sex Industry and the Power of Love*, 9 WM. & MARY J. WOMEN & L. 1 (2002).

<sup>8</sup> *Id.* at 11-12 (However research suggests that most adult women engaged in the commercial sex industry stated working between the ages of 14-18 (80% cited by Hanna's article) – a time before any ability to reach an informed decision developed. Thus, while beyond the scope of this paper, it should be noted that even arguments about the alleged autonomy of adult prostitutes are questionable at best.)

<sup>9</sup> Hanna, *supra* note 7 at 3.

a situation or not leaving.<sup>10</sup> The general public has not yet come to understand that American youth under the age of eighteen (18), who are engaged in commercial sex acts, are victims of trafficking.<sup>11</sup> Moreover, as noted by Kathleen Mitchell, former brothel operator and the founder and director of DIGNITY, a nonprofit organization working to help girls out of “the life” in Phoenix, the general public mistakenly attributes a degree of choice to these girls that simply does not exist: that if these girls don’t like what they are doing, they can just walk away. “In order to have a choice you need to have two viable options to choose from...” and most girls are running from something worse that they faced at home.<sup>12</sup> The decision to exclude use of the term “teenage prostitute” in this paper counteracts the worldview where sexually exploited youth are not viewed first and foremost as victims.

Rather, this paper uses the IOFA term “child sex trafficking,” or “domestic minor sex trafficking,” used consistently by Shared Hope International and sometimes abbreviated as DMST, to refer to the commercial sexual exploitation of American children within U.S. borders.<sup>13</sup> As defined in the federal Trafficking Victim Protection Act (the “TVPA”), the term “sex trafficking” includes the “recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.”<sup>14</sup> The terms “child” and “minor” are commonly understood to apply to individuals under the age of 18. At the federal level, the law recognizes the effect of psychological manipulation by the trafficker, including threats or intimidation and

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<sup>10</sup> *Id.*

<sup>11</sup> Shared Hope International, *supra* note 5 at 7 (arguing that the misperception is perpetuated by the failure of Congress to appropriate funds, which have already been authorized, for services for domestic sex trafficking victims, despite doing so for foreign-born victims).

<sup>12</sup> Sher, *supra* note 6 at 53. (Sher notes several examples to support this statement, including (i) in Las Vegas, the police STOP program found that 2/3 of the youth they arrested between 2004-2006 for prostitution-related offenses had been victims of sexual assault or family molestation; (ii) in Minneapolis-St. Paul, Vednita Carter and her Breaking Free group found that 75% of the women serving jail time there had been sexually or physically abused before the age of 18; and (iii) in New York, the Office of Children and Family Services determined that about 85% of prostituted girls had been investigated for abuse or neglect as part of an open child welfare case; 75% had been in foster care.)

<sup>13</sup> Shared Hope International, *supra* note 5 at iv.

<sup>14</sup> 22 U.S.C. 7102(8), (9).

blackmail, often used by traffickers and pimps to control their victims, and therefore does not require the government or the plaintiff in a civil action to prove force, fraud or coercion when the victim is a minor.<sup>15</sup> However the state law on this issue varies. New Jersey law, for example, contains no differentiation between minors and adults with respect to the definition of the means by which the victim is exploited, and prosecutors seeking to charge traffickers/pimps must still prove “threats of serious bodily harm or physical restraint” even in the case of minor children.<sup>16</sup> Another example where state law does not recognize this distinction for minors is Ohio, where the criminal code on trafficking in person provides that although compulsion need not be openly displayed or physically exerted, the state must still prove that “the victim’s will was overcome by force, fear, duress, or intimidation.”<sup>17</sup> There is no reference to this compulsion being automatic in the case of a minor as is the case in the federal law.

The approach of States to victim recognition and protection is patchy at best. For example, a 2010 addition to Illinois law provides that children cannot be criminalized as teenage prostitutes, but rather must be identified as victims of child sex trafficking.<sup>18</sup> New Jersey only passed such a “safe harbor” law a few months ago on January 17, 2012 and was only the tenth state to pass this type of law.<sup>19</sup> These types of laws are important given the aforementioned public perception of victims of child sex trafficking. While a 16 or 17-year-old victim is to be treated the same as an 11 or 12-year-old trafficking victim under the law, older victims often present as “mini adults” and society perceives these children as criminals, with the capacity to be

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<sup>15</sup> Shared Hope International, *supra* note 5 at iv; 22 U.S.C. 7102(8)(A) (providing that where a commercial sex act is “induced by force, fraud, or coercion, ***or in which the person induced to perform such act has not attained 18 years of age,***” it constitutes a severe form of trafficking in persons) (emphasis added).

<sup>16</sup> N.J.S.A. § 2C:13-8.

<sup>17</sup> Ohio Rev. Code Ann. § 2905.32(A), (B).

<sup>18</sup> IOFA, *supra* note 1 at 73.

<sup>19</sup> N.J.S.A. 2A:4A-21.

complicit in prostitution.<sup>20</sup> It is troubling that society views a child of this age as capable of making the decision to engaging in this form of “commerce” but not able to obtain a rental car or credit card. In addition to this hurdle, IOFA has pointed out that these children are “often difficult to treat and as a result are often neglected and deprioritized by child welfare and protection services.”<sup>21</sup>

Part II of this article looks at the profile of a target and victim of domestic minor sex trafficking, identifying how these youth frequently come into contact with state child protective services agencies (“*CPS Agencies*”). Part III discusses how victims of domestic minor sex trafficking are frequently misidentified as “teenage prostitutes” or not identified at all. In instances where they may be properly identified as victims, they are frequently deprioritized and overlooked for the proper services, resulting in the victim returning to the only life she knows and into the hands of her trafficker/pimp to be further exploited. While acknowledging that budgetary restraints require state agencies to employ some level of prioritization, Part IV of this paper argues that the systematic misidentification of victims of child sex trafficking is an unacceptable means of operation that is within the control of CPS Agencies. After reviewing the constitutional state of affairs following the *DeShaney* case<sup>22</sup>, Part V, looks briefly at the statutory remit of the State of New Jersey’s CPS system, headed by the Division of Youth and Family Services (“*DYFS*”) and how the lack of a clear mandate hinders the identification of cases as child sexual abuse v. trafficking v. “teenage prostitute.” It argues that society, through the operation of individual State CPS Agencies, is complicit in trafficking by not providing the funding to properly identify and treat American children who are victims of child sex trafficking at the hands of pimps. Part VI reviews potential paths forward and next steps.

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<sup>20</sup> IOFA, *supra* note 1 at 27.

<sup>21</sup> IOFA, *supra* note 1 at 27.

<sup>22</sup> *DeShaney v. Winnebago Cnty. Dept. of Social Services*, 489 U.S. 189 (1989).

## II. Characteristics of children at a high risk of being targeted by pimps & child sex traffickers

### A. Foster Children and Runaways

Insight into the failure of state agencies to identify and categorize (or fail to characterize) victims of domestic minor sex trafficking can be gained by looking at who these children are. By way of background, it has been established that juveniles are fundamentally different than adults. “Recent technological advances have led neuroscientists to conclude that the juvenile brain continues to develop into the early twenties and that the area that controls judgment, self-control, emotional regulation, reasoning and impulse control, continues to develop throughout adolescence.”<sup>23</sup> In *Roper v. Simmons*,<sup>24</sup> the Supreme Court made several findings about minors, including (1) that “lack of maturity and an underdeveloped sense of responsibility” are more common and understandable among juveniles than adults,<sup>25</sup> and (2) that “juveniles are more vulnerable or susceptible to negative influences and outside pressures.”<sup>26</sup> Given the above, juveniles involved in prostitution should be treated as victims who are in need of rehabilitative services.<sup>27</sup>

Runaways are typically found to be particularly vulnerable to being targeted by traffickers/pimps. The National Runaway Switchboard has data suggesting that between 1.6 and 2.8 million children run away from home each year.<sup>28</sup> According to background material prepared for U.S. Senate legislation on runaways in 2009, thirty three percent (33%) of children

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<sup>23</sup> Michael K. Baker, *Time for Change: Handling Child Prostitution Cases in Georgia*, 4 J. MARSHALL L.J. 177, 187 (2011).

<sup>24</sup> *Roper v. Simmons*, 543 U.S. 551 (2005) (finding that the death penalty could not be imposed on individuals under the age of 18).

<sup>25</sup> *Id.* at 569 (quoting *Johnson v. Texas*, 509 U.S. 350, 367 (1993)).

<sup>26</sup> *Id.* at 569 (citing *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982)).

<sup>27</sup> Baker, *supra* note 23 at 189.

<sup>28</sup> Shared Hope International, *supra* note 5 at 31.



who run away are lured into prostitution within forty-eight (48) hours of leaving home.<sup>29</sup> Runaway children are easy prey and a frequent target of trafficker because of their mental, physical, and financial vulnerability.<sup>30</sup> Children who have experienced repeated abuse (physical and sexual) in the home environment often begin to run away between the ages of 12-14.<sup>31</sup> A comprehensive survey of 104 prostituted juvenile victims in Clark County, Nevada, found that 82% of victims were runaways.<sup>32</sup> Children in foster care have almost invariably experienced this type of abuse and are particularly vulnerable to running away, sometimes referred to as “going AWOL.”<sup>33</sup>

The act of being placed into foster care is itself a traumatic experience.<sup>34</sup> Following removal from ones caregivers and placement into state care, the basic process of growing up is more difficult for children in foster care than other youth. Adolescent years, which are often characterized by “resistance to authority, exploration of self-identity, and anxiety about social position,” are all the more challenging for youth in foster care who have a history of abuse, neglect, or other problems with their families or caregivers.<sup>35</sup> A Vera Institute for Justice report on children who chronically run away from foster care found that at least forty percent (40%) of youth who first enter foster care as adolescents had at least one reported AWOL during their stay in foster care – three quarters of AWOLs were from group homes.<sup>36</sup>

Traffickers/pimps have been found to target locations where they know youth are going to be, including shelters and group homes, and where they will be particularly able to take

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<sup>29</sup> Sher, *supra* note 6 at 13.

<sup>30</sup> Shared Hope International, *supra* note 5 at 31.

<sup>31</sup> *Id.* at 33.

<sup>32</sup> *Id.* at 35.

<sup>33</sup> *Youth Who Chronically AWOL From Foster Care: Why They Run, Where They Go, and What Can Be Done*, Vera Institute of Justice, 3 (August 2004).

<sup>34</sup> Hochstadt, Neil, et al., *The Medical and Psychosocial Needs of Children Entering Foster Care*, Child Abuse and Neglect Journal 11, 53-62 (1987).

<sup>35</sup> Vera Institute of Justice AWOL Report, *supra* note 33 at 3.

<sup>36</sup> *Id.*

advantage of vulnerable youth, capitalizing on “certain specific life-characteristics that leave holes in a child’s social and emotional safety net” to systematically recruit children for commercial sexual exploitation.<sup>37</sup> Shared Hope International has identified that youth from dysfunctional families, involving abuse or trauma, are particularly vulnerable to a trafficker’s/pimp’s method of recruitment and control.<sup>38</sup> The Boston-based My Life, My Choice Project found that of the first 40 girls they worked with who were living in a group home setting within the foster care system, 38 had been approached by a pimp to be recruited for the commercial sex trade.<sup>39</sup>

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“I was 14 years old, and the way the pimp came at me was that at first I didn’t even know he was a pimp. He came at me like a boyfriend. Yes, he was an older boyfriend but he cared about me... Six months later he told me ‘Let’s run away together. We can have a beautiful house and family.’ And I did believe him, and we ran away, and then the story changed and I met the other girls that he had in his stable. And I had to go out every night and work the streets – the alternative was being gang-raped by a group of pimps while everyone watched.”

- Tina Frundt, Founder of Courtney’s House,  
and Survivor of domestic minor sex trafficking<sup>40</sup>

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A common thread, beyond being in the child welfare system or a runaway, is a history of child physical and sexual abuse in the home or by extended family members.<sup>41</sup> The Letot Center, a juvenile justice facility in Dallas, TX, geared towards the restoration of commercially sexually exploited children, found that over ninety percent (90%) of commercially exploited children it serviced had been previously physically and sexually abused; greater than seventy percent (70%) of children serviced at WestCare Nevada, a shelter for youth in Las Vegas, met this same criteria.<sup>42</sup>

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<sup>37</sup> Shared Hope International, *supra* note 5 at 31, 35.

<sup>38</sup> *Id.* at 31.

<sup>39</sup> *Id.* at 35.

<sup>40</sup> *Id.* at 8.

<sup>41</sup> *Id.* at 9.

<sup>42</sup> *Id.* at 31.

## B. On a Larger Scale

Discussion thus far has focused on less organized trafficking enterprises, but it should be noted that the same characteristics that put children at a high risk of being targeted by pimps are transferrable to organized criminal enterprises trafficking in the child sex trade. Shared Hope International has identified a worrying potential trend in traffickers: as transportation of humans across borders becomes increasingly difficult and dangerous, traffickers may begin viewing local youth as a more viable product in the criminal market.<sup>43</sup> Domestic child victims can be easy targets and carry less risk for the traffickers than do adults and foreign nationals.<sup>44</sup> For example, a human trafficker named Timothy Gereb in Texas had an order for ten (10) female sex slaves to sell to a brothel in Louisiana.<sup>45</sup> Since he and his accomplices were only able to traffic two (2) girls from Mexico, he began to recruit local girls from San Antonio to fill his quota.<sup>46</sup>

Trafficked youth frequently come from unstable homes, have been entrenched in either the juvenile justice system or child protective services, and are frequently “trauma bonded” to their trafficker/pimp.<sup>47</sup> Indeed, victims may exhibit symptoms of the Stockholm syndrome, displaying an emotional bond and believing their trafficker loves them.<sup>48</sup> This history leads victims to run away, either returning to her trafficker to be further victimized or become highly vulnerable to recruitment by another trafficker/pimp.<sup>49</sup> Either of these outcomes only serves to further embed the lifestyle and identity of a child as a trafficking victim.

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<sup>43</sup> Shared Hope International, *supra* note 5 at 8-9.

<sup>44</sup> *Id.* at 8

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 58.

<sup>48</sup> IOFA, *supra* note 1 at 45.

<sup>49</sup> Shared Hope International, *supra* note 5 at 58.

### III. Ineffective response of child welfare agencies to trafficked children

#### A. Introduction

Once a child becomes a victim of sex trafficking, he or she will often have service needs (including mental health, social and medical) that are different from other cases of simple neglect or sexual abuse.<sup>50</sup> However, where these children do come into contact with state agencies such as child protective services, they are often misclassified, labeling the abuse as simple sexual abuse, for example.<sup>51</sup> One instance of this is documented in the Shared Hope International Report: in 2006 the mother of a 14-year-old girl gave her daughter to her crack dealer in order to pay for drugs.<sup>52</sup> While the mother was arrested and charged, the child remained in the custody of the mother's dealer, who was also a registered sex offender.<sup>53</sup> He supplied the 14-year-old with drugs, sexually abused her, and then prostituted her in partnership with another man.<sup>54</sup> Shared Hope International has suggested that this misidentification is the result of lack of training and understanding of human trafficking by state professionals.<sup>55</sup> When a first responder comes into contact with a victim, that victim's average age is fifteen (15); however, these victims have often already been prostituted for a period of time, indicating that the average age that a pimp recruits a girl into the sex trade is 12-14 years old.<sup>56</sup> At fifteen (15), even an adolescent without a troubled past can be reticent and difficult to deal with, but add in the history of abuse and neglect and the child can be downright combative. This investigator was most recently told of a case

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<sup>50</sup> IOFA, *supra* note 1 at 106.

<sup>51</sup> Shared Hope International, *supra* note 5 at 32.

<sup>52</sup> *Id.* at 33.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 32.

<sup>56</sup> *Id.* at 30. (I note that the average age at which pimps recruit girls into "prostitution" is 12 – 14 years old and the average age at which youth who are chronically abused at home begin to run away is also 12 – 14 years old. See *supra* note 31).

where a “teenage prostitute” spat in an FBI agent’s face and “placed him in a headlock.”<sup>57</sup> IOFA has also noted that these cases are complex, time-consuming and frustrating to an already underfunded and often burnt-out workforce of first responders.<sup>58</sup> Whatever the cause, the result is the loss of the commercial component of the crime and the lost opportunity to obtain the tailored services for the victim to which she is entitled.

## **B. Integration of new Legislation**

In 2000, the first federal anti-trafficking statute, the Trafficking Victims Protection Act (TVPA) was enacted to combat trafficking in persons by ensuring punishment of traffickers and protection of victims.<sup>59</sup> Despite the fact that this was nearly twelve years ago and that the TVPA has been reauthorized multiple times, many organizations and agencies are unaware of its existence and the existence of other state laws that provide critical support and protect the rights of trafficking victims.<sup>60</sup> Fewer still have implemented the protections of the TVPA by incorporating policies, protocols, and case management techniques that are more victim-centric and capable of identifying victims of trafficking, not to mention training for staff to respond to and appropriately serve child victims of sex trafficking.<sup>61</sup>

In 2007, IOFA undertook a project entitled Building Child Welfare Response to Child Trafficking, in which the Illinois Department of Children and Family Services, one of the largest child welfare agencies in the world, was the first implementing partner, working with IOFA to develop training and advocacy efforts on child trafficking for an audience of child protective

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<sup>57</sup> Gigi Scoles, Acting Assistant Prosecutor, Essex County, NJ, remarks to Seton Hall University School of Law Jurisprudence of Human Trafficking class on Monday, March 12, 2012 during presentation on the Challenges to State Prosecution of Human Trafficking.

<sup>58</sup> IOFA, *supra* note 1 at 13.

<sup>59</sup> 22 U.S.C. § 7101 *et seq.*

<sup>60</sup> IOFA, *supra* note 1 at 11, 13.

<sup>61</sup> *Id.*

services within the agency.<sup>62</sup> In its 2011 report, IOFA notes that the protection of children has rarely been included in government-funded initiatives to combat human trafficking in the United States, indicating that support for this group has not been a priority.<sup>63</sup> Moreover, on a more local level, these cases are complex and can be difficult for even the most seasoned professional, particularly if the child lacks immediate evidence of a parent or guardian; as a result, children and youth who are US citizens are often misidentified as juvenile prostitutes or criminals and placed in the juvenile justice system.<sup>64</sup> As an example of this, IOFA's report found that many child welfare professionals indicated they had "encountered trafficked children or youth previously in their work, but because they did not know it at the time, the children slipped through the cracks and were never identified as trafficking victims."<sup>65</sup> Slipping through the cracks at a young age embeds the trafficking victim identity and lifestyle in a child and further decreases her chances of being properly identified and receiving services at her next encounter with child protective services.

It is clear that victims of domestic sex trafficking often fail to disclose their experiences or to self-identify as victims.<sup>66</sup> As a result, the true extent of victimization is not known – not only for purposes of prosecution, but also for purposes of providing services specific to the type of victimization these children have experienced.<sup>67</sup> This is a key fact, as the trauma suffered by victims of domestic minor sex trafficking is more severe than most sexually-based trauma due to its chronic nature and the "reinforced victimization from the community at large of buyers."<sup>68</sup> This makes it all the more critical for first responders to identify these children as victims, yet

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<sup>62</sup> *Id.* at 14.

<sup>63</sup> *Id.* at 12.

<sup>64</sup> *Id.* at 13.

<sup>65</sup> *Id.*

<sup>66</sup> Shared Hope International, *supra* note 5 at 45.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* at iv.

research has shown that important elements such as intake procedures that look for signs of trafficking, victim-centered questioning techniques and appropriate training, are only minimally in place, if present at all.<sup>69</sup> Moreover, access to services is often conditioned on assisting in the prosecution of the trafficker, a truly unique requirement.<sup>70</sup>

It is not a radical suggestion that the approach should be more victim-centric and not focused on prosecuting the trafficker, which should be a secondary concern. Common sense indicates that a trauma-bonded child victim without positive experience with the police, child protective services, or her biological family, is unlikely to be an ideal witness, if a witness at all, in the prosecution of her pimp (commonly known to her as her “boyfriend”). Treating the victim as a primary matter will eventually serve the prosecutor’s needs as well, as once the victim is accessing services, feeling safe, and in a more stable frame of mind, one would think she would be much more likely to cooperate with prosecutors and law enforcement.

## **IV. Does the State Agencies’ Lack of Appropriate Response Rise to the Level of Negligence?**

### **A. Anti-Trafficking Law**

The TVPA alludes to the concept that service providers & government agencies must treat victims of human trafficking (which includes all those engaged in the commercial sex industry under the age of 18) with a “victim-centered” approach.<sup>71</sup> Under federal law, victims of human trafficking are entitled to a framework of rights, including:

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<sup>69</sup> *Id.* at 45.

<sup>70</sup> *Id.* at iv.

<sup>71</sup> IOFA, *supra* note 1 at 82.

- i. The right to protection if one's safety is at risk or there is a danger of recapture by the trafficker;<sup>72</sup>
- ii. Privacy;<sup>73</sup>
- iii. The right not to be detained in facilities inappropriate to their status as victims;<sup>74</sup>
- iv. The right to receive medical attention;<sup>75</sup>
- v. Access to appropriate social services;<sup>76</sup> and
- vi. Compensation for damages.<sup>77</sup>

Under the 2008 TVPA reauthorization, federal, state or local officials who discover a minor who may be a victim of human trafficking must notify the US Department of Health & Human Services (DHSS) within 24 hours in order to facilitate the provision of interim assistance.<sup>78</sup> If a child commits a crime such as prostitution as part of the trafficking scheme, she should not be processed or treated as a delinquent or criminal, but rather as a victim-witness and provided appropriate care, services, and advocacy.<sup>79</sup>

The fact that state agencies “touch” the lives of child victims of sex trafficking to some degree is clear. The common history of abuse in the lives of child victims of sex trafficking leads to frequent histories with child protective services, as evidenced by a finding by the Letot Center in Dallas, TX, that that 10% of juveniles receiving services were previously in child protective services custody.<sup>80</sup> Given the trauma bonding that occurs between a victim and her

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<sup>72</sup> 22 U.S.C. 7105(c)(1)(C)

<sup>73</sup> 22 U.S.C. 7105(c)(1)(C)(ii); 22 U.S.C. 7101(d)(3).

<sup>74</sup> 22 U.S.C. 7105(c)(1)(A)

<sup>75</sup> 22 U.S.C. 7105(c)(1)(B)

<sup>76</sup> 22 U.S.C. 7105(b)(1)(B).

<sup>77</sup> *Id.* (IOFA – 82); Shared Hope International, *supra* note 5 at 6.

<sup>78</sup> 22 U.S.C. 7105(b)(1)(G).

<sup>79</sup> IOFA, *supra* note 1 at 83.

<sup>80</sup> Shared Hope International, *supra* note 5 at 35, iv.



trafficker (reminiscent of Stockholm syndrome) and in order to avoid the risk of being re-trafficked, it is imperative that children are screened for trafficking and that child protection workers and service providers assess suitable placement options.<sup>81</sup>

The Shared Hope International study found that misidentification of victims was the “primary barrier to the rescue and response to domestic minor sex trafficking victims.”<sup>82</sup> It also identified that this misidentification occurs at all levels, from law enforcement to runaway youth shelters’ intake process to court adjudication – and that it causes a chain reaction of negative outcomes and is ultimately responsible for the “failure to deliver the necessary services to interrupt and treat the trauma [victims] have endured.”<sup>83</sup>

In many child trafficking cases, particularly those where a family member has initiated or conducted the trafficking, or where termination of parental rights has already occurred, family reunification may not be in the child’s best interest and the state would take over the role of providing care and guardian for the child. If there is no family to return to, or there are not responsible adults to care for the child (factors that mostly likely precipitated the trafficking situation itself), “the state becomes the de facto guardian, and children are placed for adoption, with foster care families, or in group residential facilities.”<sup>84</sup> For adolescent children, this can be challenging as children in this age group, particularly who are in need of specialized services, are notoriously difficult to place in foster care.<sup>85</sup>

## **B. State CPS Liability**

If harm comes to a child, particularly a child that has been removed from his or her parents or primary caregivers and taken into state custody, child agencies may be liable for

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<sup>81</sup> IOFA, *supra* note 1 at 107.

<sup>82</sup> Shared Hope International, *supra* note 5 at v.

<sup>83</sup> *Id.*

<sup>84</sup> IOFA, *supra* note 1 at 107.

<sup>85</sup> *Id.*

negligent supervision.<sup>86</sup> Under the *parens patriae* doctrine, a concept of the state or society taking on the role of the child's parent, just as parents can be prosecuted for neglect and not meeting a child's basic needs, the state in certain circumstances has taken on the responsibility of meeting the child's needs. For victims of commercial sex trafficking, such needs can be intensive – and the result of not meeting them can be weighty: the child running away, back into the grasp of her trafficker/pimp. Thus, under this theory, and taking into consideration that child protective services across the country have taken a tiered approach to child abuse and neglect cases as a result of being under-resourced, it is conceivable that a state agency's systemic negligence with respect to victims of domestic trafficking could give rise to a cause of action.<sup>87</sup>

However, it is clear from the *DeShaney* case that any liability of this nature for children who are not in the custody of child protective services (“CPS”) cannot easily be imputed to CPS under a constitutional due process theory.<sup>88</sup> The majority in *DeShaney* determined that while the due process clause forbids the state itself from depriving individuals of life, liberty or property without the due process of law, this protection could not be extended to create an affirmative obligation on the part of the state to protect children from private actors.<sup>89</sup> However the Court recognized that a state may impose such an affirmative duty through the enactment of state laws under a tort theory of liability.<sup>90</sup> Additionally, the Court seemed to suggest that liability could be

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<sup>86</sup> AWOL, *supra* note 33 at i, citing *Doe v. New York City Department of Social Services*, 684 N.Y.S. 2d 126 (1998); *Bartels v. County of Westchester*, 76 A.D.2d 517 (New York, 1980).

<sup>87</sup> Although this will of course vary from state to state, Shared Hope International's study identified child protective services caseworkers who stated that adolescents were routinely regarded as low priority, as they were assumed to have a greater ability to protect themselves. Shared Hope International, *supra* note 5 at 73.

<sup>88</sup> *DeShaney v. Winnebago Cnty. Dept. of Social Services*, 489 U.S. 189 (1989) (In *DeShaney*, 4 year old Joshua DeShaney was beaten repeatedly by his father, ultimately resulting in permanent brain damage; despite repeated reports by private individuals and doctors who treated Joshua, the state child protective services agency had not removed him from his father's custody).

<sup>89</sup> *Id.* at 201 – 203.

<sup>90</sup> *Id.* at 202.

imputed had the child been in the custody of CPS when the abuse occurred, leaving open the door for liability when harm comes to children in foster care or a group home setting.<sup>91</sup>

In the wake of *DeShaney*, every circuit, apart from the Fifth, has articulated at least some circumstances where the rule of “no affirmative duty” under the due process clause, as articulated by *DeShaney*’s majority opinion, can be overcome by one of two exceptions – either through the creation of a “special relationship” or the presence of a “state-created danger.”<sup>92</sup> The “special relationship” relates to the concept of custody, which *DeShaney* required and which has been discussed in prior cases where the plaintiff was either a prisoner<sup>93</sup> or an involuntarily committed mental patient<sup>94</sup> – indicating that the Constitution imposes a duty to provide safety and protect well-being when one is taken into custody and held against his or her will.<sup>95</sup> However, the full contours of the concept of custody were not fleshed out in *DeShaney*, reserving the question of foster care for another day.<sup>96</sup>

The other exception appears to be a mutation of the theory of liability articulated under Judge Brennan’s dissent in *DeShaney*.<sup>97</sup> Judge Brennan focused on the fact that, by creating the CPS Agency and funneling all reporting and responses to alleged cases of child abuse through that CPS Agency, the State monopolized the path to relief, holding itself out to society as the body responsible for intervening in abuse and neglect cases.<sup>98</sup> By doing this, it allowed society to rely on CPS such that “a private citizen... would doubtless feel that her job was done as soon

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<sup>91</sup> Id. at 201.

<sup>92</sup> Laura Oren, *DeShaney and “State-Created Danger”: Does the Exception Make the “No-Duty” Rule?*, ADMIN. & REG. L. NEWS 3, 3-4 (Summer 2010).

<sup>93</sup> *Estelle v. Gamble*, 429 U.S. 97 (1976).

<sup>94</sup> *Youngberg v. Romeo*, 457 U.S. 307 (1982).

<sup>95</sup> Oren, *supra* note 92 at 4.

<sup>96</sup> *Id.*

<sup>97</sup> *DeShaney*, 489 at 203 – 212.

<sup>98</sup> *Id.* at 204 – 207.

as she had reported her suspicion of child abuse.”<sup>99</sup> Thus Judge Brennan’s dissent in *DeShaney* could be read as a “state-created danger” concept, whereby the state has created the danger of further abuse through its holding itself out and society’s reasonable reliance that it will take action in reported cases of suspected abuse.

The “state-created danger” theory looks to whether a state actor took some “affirmative act,” to whether the danger was foreseeable, and to the state of mind of the state actor.<sup>100</sup> The state of mind requirement was later heightened to require culpability that “shocks the conscience” in the Third Circuit,<sup>101</sup> reinforcing the Supreme Court’s ruling that negligence can never violate the due process clause of the Fourteenth Amendment.<sup>102</sup> Today, although litigants still bring cases involving a state’s failure to protect a child (including foster children), “state-created danger” claims seldom survive the motion to dismiss or summary judgment stages in litigation.<sup>103</sup>

For children in foster care, the state courts appear to be more sympathetic. For example, in *Mark G. v. Sabol*,<sup>104</sup> New York’s court of last resort allowed children in the New York foster care system to re-plead their claims under substantive due process and common-law tort

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<sup>99</sup> *Id.* at 209 – 210.

<sup>100</sup> Oran, *supra* note 92 at 4 (For example, the Third Circuit created the following standard in *Kneipp v. Tedder*, 95 F.3d 1199, 1208 (3d Cir. 1996): (1) the harm ultimately was foreseeable and fairly direct, (2) the state actor acted in willful disregard for the safety of the plaintiff, (3) there existed some relationship between the state and the plaintiff, and (4) the state actors used their authority to create an opportunity that otherwise would not have existed for the third party’s crime to occur.).

<sup>101</sup> *Bright v. Westmoreland Cnty.*, 443 F.3d 276, 281 (3d Cir. 2006).

<sup>102</sup> *Daniels v. Williams*, 474 U.S. 327, 328 (1986).

<sup>103</sup> Oran, *supra* note 92 at 5 (for the period from 2008-2010, one reported case settled for \$375,000 – *D.N.v. Snyder*, 608 F. Supp.2d. 615 (M.D. Pa. 2009); the defendants, high ranking management within the police, discovered that one of their officers, with a history of domestic violence and who had applied to be a foster parent, was viewing child pornography on his work computer. “They conspired to cover-up his crimes, going so far as to destroy the evidence on the computer, to conceal the reasons for his termination of employment, and to provide neutral references for him. Within the year, the protected officer gained access to the sisters of tow boys he was able to foster due to the cover-up. He sexually assualated the girls, and their foster parents brought the Section 1983 claims on their behalves”).

<sup>104</sup> *Mark G. v. Sabol*, 93 N.Y.2d 710 (1999).

doctrines.<sup>105</sup> Also, in 2003, a decision of the Washington Supreme Court affirmed that foster children possess substantive due process rights under the U.S. Constitution that states are required to respect.<sup>106</sup> *Braam v. State* held that those rights include the right to be free from unreasonable risks of harm and a right to reasonable safety, including adequate services to meet a foster child's basic needs.<sup>107</sup> Further support for the existence of liability on the part of state agencies can be found in New Jersey with respect to its Child Placement Bill of Rights Act.<sup>108</sup> In 2005, the court held that children who were mistreated in an adoptive home "not only had a federal constitutional claim for deprivation of their substantive and procedural due process rights, but also a private right of action for damages" under New Jersey's Child Placement Bill of Rights Act.<sup>109</sup>

As mentioned above, the Majority in *DeShaney* noted that its holding applied only to constitutional claims, and that this did not prevent a state from abrogating its sovereign immunity to create a cause of action and affirmative duty under state tort law for situations similar to the case at bar.<sup>110</sup> However, such abrogation is not commonplace and a review of the respective Wisconsin, California and New Jersey tort claims statutes has shows that no such abrogation has occurred. In fact, as one commentator has noted, "many state governments have changed their laws using [sic] a more clear and concise language in order to help protect not only the state from uncertain liability, but more importantly, those individuals that compromise the state's public as

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<sup>105</sup> Beth A. Diebel, *Mark G. v. Sabol: Substantive Due Process Rights, A Possibility for Foster Care Children in New York*, 64 ALB. L. REV. 823, 823 – 24 (2000).

<sup>106</sup> Howard Davidson, *Children's Rights and American Law: A Response to What's Wrong with Children's Rights*, EMORY INTERNATIONAL LAW REVIEW 69, 71 (2006).

<sup>107</sup> *Braam v. State*, 81 P.3d 851 (2003).

<sup>108</sup> N.J.S.A. 9:6B-1 *et seq.*

<sup>109</sup> *K.J. ex rel. Lowry v. Div. of Youth & Family Services*, 363 F. Supp.2d 728, 747 (D.N.J. 2005); Davidson, *supra* note 106 at 71.

<sup>110</sup> *DeShaney*, 489 at 202.

well.”<sup>111</sup> One case that demonstrates this approach is *Nicini v. Morra*, a 2000 New Jersey case involving litigation against a caseworker who placed a child in an abusive foster home, and wherein the court affirms that immunity even extends to the negligent acts of DYFS employees.<sup>112</sup> Another example in Wisconsin is *Kara B. by Albert v. Dan County*, in which a child brought a §1983 action and state law claims against the state after suffering sexual abuse in a foster home; the appellate court found that while the county actors did not enjoy qualified immunity, they were entitled to discretionary act immunity from the state law claim.<sup>113</sup>

However, in the years following the *DeShaney* decision in 1989, courts throughout the country have found select instances to interpret the law in favor of protecting children in the context of CPA action. For example, in a 1990 case where a guardian *ad litem* brought suit against the state CPS agency for failing or refusing to investigate reports of child abuse and neglect, the Ohio Supreme Court held that caseworkers were not entitled to absolute immunity from liability for negligence and the statute requiring the agency to investigate suspected child abuse created a specific duty to the child (negating the defense of the public duty doctrine).<sup>114</sup> In a 1995 case where sexually abused children brought an action against the state for failure to protect them from further abuse after such abuse was reported, the Vermont Supreme Court held that the state protective agency had a duty to protect the victims, that the state had waived its immunity under the Vermont Tort Claims Act, codified at 12 V.S.A. 5601-5606, and that the

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<sup>111</sup> Zach Gordon, *The Implications and Reflections of Deshaney v. Winnebago*, UNIVERSITY OF WASHINGTON BOTHELL POLICY JOURNAL (March, 2012) available at <http://uwbpolicyjournal.wordpress.com/2012/03/02/the-implications-and-reflections-of-deshaney-v-winnebago-zach-gordon/>.

<sup>112</sup> *Nicini v. Morra*, 212 F.3d 798, 815 (3d Cir. 2000) (finding that a DYFS caseworker who placed a child in a home where that child was subsequently abused was entitled to qualified immunity on the minor’s resulting state tort claims under the NJ Tort Claims Act because the caseworker’s conduct amounted to, at most, negligence; this provision of the NJ Tort Claims Act [N.J.S.A. 59:3-3] is similar to the provisions of the CA Tort Claims Act [§ 820.4] and the Federal Tort Claims Act [28 U.S.C. § 2680(a)].)

<sup>113</sup> *Kara B. by Albert v. Dane Cnty.*, 542 N.W.2d 777, 790 (1995).

<sup>114</sup> *Brodie v. Summit Cnty. Children Services Bd.*, 51 Ohio St.3d 112, 115-20 (1990).

discretionary duty exception did not bar the suit.<sup>115</sup> More recently, in a 2008 case where the father of a child who suffered injuries while in the care of her mother brought suit against the Hawaii Department of Human Services for negligence in its failure to properly investigate and protect the child from abuse, the Hawaii Supreme Court found that the state waived sovereign immunity and that it had a duty to protect the child from further abuse once she was specifically identified to the state.<sup>116</sup> While these cases may provide some optimism as to state accountability for failure to protect children in our society, they are the clear minority within the over twenty (20) year progeny of case law that *DeShaney* has produced in this country.

### C. Societal Liability

While the threat of liability is often a coercive stick by which organizations can be incentivized to take some action or another, it should not be the primary motivation in these kinds of cases. At the end of the day, and as noted repeatedly herein, child protective services agencies across the country are under-resourced and under-staffed. And where there are clear cases of mistakes for which they should be held accountable, they can only be expected to do so much with the resources they are provided in their budget allocations. When we, as a democratic society, allow our representatives to so lowly prioritize protection and services for some of our most vulnerable individuals, we are sacrificing these children for our budget cuts and lower taxes. While we may not be directly undertaking “the recruitment, harboring, transportation, provision, or obtaining of a person for the purposes of a commercial sex act” as defined in the TVPA, by allowing these children to slip through the cracks, by not identifying them as victims of trafficking and instead criminalizing them, by not providing the tailored services that will

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<sup>115</sup> *Sabia v. State*, 164 Vt. 293, 298-300 (1995).

<sup>116</sup> *Kaho’ohanohano v. Dep’t. of Human Services, State of Haw.*, 117 Hawai’i 262, 288-296 (2008) (however, the court also held that the amended statute abolishing joint and several liability for government entities would not apply retroactively to this action, suggesting that the state may be moving in the direction of limiting its liability in such cases going forward – *see supra* 309).

meet their needs as victims and prevent them from running away back to their traffickers/pimps, we are allowing trafficking to continue.<sup>117</sup>

An extreme view could see this as a form of trafficking itself. Traditionally, a pimp receives a financial benefit in the form of the money paid by a ‘john’ and a girl is sexually exploited as a result of that financial exchange; in an extrapolated analogy, society receives a financial benefit in the form of lower taxes or smaller state budgets, and girls who could otherwise be protected, at least in so much as they come into contact with ill-equipped state agencies, continue to be sexually exploited as a result of that exchange. In essence, we have become the pimp. While the analogy may seem extreme, in principle, these failures in exchange for the monetary benefit governments and societies receive in the form of budget cuts are the equivalent to the crack the mother of a 14-year-old Louisiana girl obtained in exchange for letting her dealer have her daughter. Potential hyperbole aside, societies and states form CPS Agencies to care for vulnerable youth; improperly funding and administering these agencies results in continued trafficking which we could otherwise put an end to.

Although an exhaustive discussion is beyond the scope of this paper, other areas of note include failures in prosecution and the response of police staff to human trafficking cases. For example, law enforcement officers have “been compelled to charge a victim of DMST [Domestic Minor Sex Trafficking] with a delinquency offense in order to detain her in a secured facility to keep her safe from the trafficker/pimp and the trauma-driven response of flight.”<sup>118</sup> While the threat from pimps/traffickers is very real, detaining victims, often in the general population section of the prison, creates a greater risk, not to mention the message it sends to a girl that she

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<sup>117</sup> 22 U.S.C. 7102(9).

<sup>118</sup> Shared Hope International, *supra* note 5 at vi; Also reflected in Remarks by Gigi Scoles, *supra* note 57.



is a criminal, not a victim.<sup>119</sup> Unsurprisingly, victims rarely receive any services in detention, much less services specific to the trauma endured through sex trafficking.<sup>120</sup>

With respect to prosecutions of individuals for commercial sexual exploitation of minors, a recent study of cases in the United States between 1998 to 2005 indicates that nearly sixty percent (60%) of cases “presented to the US Attorney’s Offices were declined for prosecution.”<sup>121</sup> Prosecutions seem to be lacking even when a commercial sex act is interrupted in progress (which is rare), such as a case in Las Vegas in which a 12-year-old was arrested with a 50-year-old man, cash in plain sight, lotion on his hands, and a confession by the buyer, prosecutors tasked with prosecuting the juvenile for prosecution had to push prosecutors aggressively to bring a case against the buyer.<sup>122</sup>

So it is not just child protective services where we are failing our children. However, in many cases, the lack of accountability may come down to the remit of child protective services.

## **V. The Mandate of Child Protective Services**

Since American children who have been victims of trafficking have experienced both abuse and neglect, one might naturally think that they would fall within the remit of a State’s child protective services agency. Add to that the fact that many child trafficking victims have no family, as “parentless and homeless youth are often targeted for various forms of exploitation, including human trafficking,” and the expectation that CPS should be involved seems obvious.<sup>123</sup>

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<sup>119</sup> A case from 2008 where a network of teenage pimps and sexually exploited youth was discovered and arrested, demonstrates this, as both suspects and victims were arrested and held at the same juvenile detention facility in the general population. Shared Hope International, *supra* note 5 at 58-9.

<sup>120</sup> Shared Hope International, *supra* note 5 at vi.

<sup>121</sup> *Id.* at 13.

<sup>122</sup> *Id.* at 22.

<sup>123</sup> IOFA, *supra* note 1 at 115.

However, “most child protective services workers state that unless the perpetrator is a family member or ‘caregiver,’ their mandate does not allow them to become involved.”<sup>124</sup> In addition to this, large caseloads & limited resources result in a highly structured prioritization process of the complaints received for investigation and action.<sup>125</sup> Assessments by Shared Hope International in many locations found that “child protective services workers often choose to narrowly interpret their mandate, resulting in significant confusion over whose responsibility it is to provide protection, shelter, and services to domestically trafficked minors.”<sup>126</sup>

For example, New Jersey’s statutory provisions regarding child abuse are contained in Title 9, Chapter 6 and provide that the relevant CPS Agency (DYFS), upon receipt of a report of abuse, must take action to ensure the safety of the child, including investigation and applying for a court order to take the child into state custody if appropriate.<sup>127</sup> While this would appear to be neutral and apply to all children under the age of 18, the definitions section of the statute can be construed more narrowly. It provides that an abused child means “a child under the age of 18 whose parent, guardian, or other person having [his/her] control and custody” inflict some sort of abuse, neglect, abandonment or cruelty upon that child.<sup>128</sup> For the purposes of Chapter 6, “parent” includes the “stepfather and stepmother and the adoptive or resource family parent.”<sup>129</sup> A “person having the care, custody and control of any child” means “any person who assumed the care of a child, or any person with whom a child is living at the time the offense is committed... and a person who legally or voluntarily assumes the care, custody, maintenance or

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<sup>124</sup> Shared Hope International, *supra* note 5 at 72.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> N.J.S.A. 9:6-8.18.

<sup>128</sup> N.J.S.A. 9:6-8.9 (*emphasis added*).

<sup>129</sup> N.J.S.A. 9:6-2.

support of the child.”<sup>130</sup> If a child has run away from home and is living on the street on her own, in a traditional CPS view, there is no “parent” or “guardian” responsible.

However, a broader interpretation is certainly not inconsistent with the statute, at least as written in New Jersey. It is not difficult to argue that under the law, the fact that a juvenile is exchanging sex for money or some other thing of value should in and of itself be enough to establish a *prima facie* case of child abuse. Under such an argument, the juvenile’s parents could be viewed as guilty of failing to protect their child from harm (i.e. being recruited by a pimp and engaging in the commercial sex trade), but even more clearly, the pimp often takes on the role of the primary person responsible for the welfare of the child, and is liable for acts of child abuse in trafficking the child.<sup>131</sup> Upon the recognition that these youth are children with special health needs, the child welfare system will be able to provide them with the specialized therapeutic services they require and deserve and have an obligation to do so.<sup>132</sup> To determine otherwise is the equivalent of turning a blind eye to an obvious problem under one’s own roof. However, as noted previously, CPS Agencies are allotted a limited amount of resources. Until we as a society prioritize the protection of our most vulnerable youth, through both increased resources for CPA Agencies and our legislative framework, we cannot expect great change in this area.

## **VI. Path forward**

The studies and reports reviewed for this paper make a number of recommendations for moving forward in the area of domestic sex trafficking of minors. At a foundational level, and in order to undertake some of the later recommendations, funding authorized in the TVPA

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<sup>130</sup> *Id.*

<sup>131</sup> Kate Brittle, *Child Abuse by Another Name, Why the Child Welfare System is the Best Mechanism in Place to Address the Problem of Juvenile Prostitution*, HOFSTRA LAW REVIEW 1339, 1341 (Summer 2008).

<sup>132</sup> *Id.*

reauthorization for shelters and services for domestic victims of child commercial sex trafficking must be appropriated.<sup>133</sup> As noted poignantly by Julian Sher's recent expose on US minor sex trafficking, "The U.S. government admirably offers special programs and funding for foreign victims of trafficking but none for domestic victims. The Department of Justice estimates fifteen thousand (15,000) foreign nationals are trafficked into the country each year for forced labor and sexual slavery. A human tragedy, no doubt, but by all accounts the number of American girls trafficked on American streets is at least ten to twenty times greater."<sup>134</sup> Also at a very basic level, the study of foster youth who are chronically AWOL, which did not set out to study "the topic of prostitution," still found that commercial sexual exploitation often occurred near group care settings & recommended that facility managers make sure that staff are paying attention to the activities going on in the surrounding area that may pose a risk to the youths.<sup>135</sup>

The Shared Hope International study found misidentification to be the primary area for improvement. Their study revealed that agencies rarely asked questions that related to domestic minor sex trafficking and it also revealed that they were still using generic intake and interviewing procedures that are geared towards adults and again without reference to child commercial sex exploitation.<sup>136</sup> To this end, questions relevant to human trafficking need to be integrated into preexisting forms already in use.<sup>137</sup> "When entities gear their interviews to incorporate the dynamics of DMST [Domestic Minor Sex Trafficking], such as trauma bonds, pimp control, severe chronic trauma, learned hostility, etc., a higher level of trust is obtained from the youth, along with greater disclosure of information."<sup>138</sup> Moreover, "identification

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<sup>133</sup> Shared Hope International, *supra* note 5 at 75.

<sup>134</sup> Sher, *supra* note 6 at 11.

<sup>135</sup> AWOL, *supra* note 29 at 31.

<sup>136</sup> Shared Hope International, *supra* note 5 at 64-5.

<sup>137</sup> *Id.* at 45.

<sup>138</sup> *Id.* at 65. (For specific guidance on interview approaches for service providers, *see Id.*)

training, procedures, and protocols are needed for all agencies potentially interacting with domestic minor sex trafficking victims, including service and shelter providers, outreach teams, non-profit organizations, law enforcement, prosecutors, juvenile justice system sections.”<sup>139</sup>

As a means of better working with victims and creating a victim-centric approach to interacting with victims of domestic minor sex trafficking, first responders should look to restoring dignity to victims and understand the kind of trauma they have gone through. With respect to restoring dignity, agencies need to help minors “understand their victim status & separate who they are from the experiences they have been forced to have; helping them discover their strengths and use them to benefit others.”<sup>140</sup>

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“One of the things that became abundantly clear to the staff is that she (a survivor of domestic minor sex trafficking) had a real capacity to... care for others, and a real compassion there. And they arranged for her to do some volunteer work at a seniors’ home. She came home after the 4<sup>th</sup> visit to the seniors’ home, just floating on air, for lack of a better word – they had offered her a job working at the facility. And her comment at the time was, ‘I didn’t know I was good at anything but being bad.’” (69)

- Andrea Hesse, Alberta Children’s Services, PSECA, Canada<sup>141</sup>

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With respect to understanding trauma, this will require additional training. Nearly every professional population interviewed by Shared Hope International reported “frustration” at working with victims of child sex trafficking; however, “their behavior is normal and can be anticipated when viewed through the lens of complex trauma.”<sup>142</sup> By understanding how trauma manifests, such as through disorganized memories, somatic reactions, PTSD, inability to self-soothe, etc., programs & interventions have a much greater chance of success.<sup>143</sup>

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<sup>139</sup> *Id.* at 49. (for a table identifying warning signs of domestic minor sex trafficking, *see Id.*)

<sup>140</sup> Shared Hope International, *supra* note 5 at 69.

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

IOFA's training and evaluation report not only produced some excellent resources in terms of screening tools, but also revealed that all the training available cannot get CPS workers past existing department policies and protocols, which seriously limit their ability to respond to child trafficking victims.<sup>144</sup> This means including information on human trafficking on intake forms, modifying protocols to support identification, and passing knowledge up to a supervisory level.<sup>145</sup>

IOFA also identified the funding constraints and lack of a clear mandate to work with child victims of trafficking on the part of CPS Agencies.<sup>146</sup> While education and an internal agency champion/subject matter expert<sup>147</sup> on human trafficking may be able to make headway in the area of training and changing protocols/intake forms, the lack of a direct mandate is a more complicated issue. As has been argued by this paper and others<sup>148</sup> a case can be made for child victims of domestic sex trafficking – even “teenage prostitutes” – to fall within the scope of child protective services. However, an agency that is as under-funded as most child protective services are is not likely to push for that argument, because even if successful, they will not have the resources to support the victims. The solution to this goes back to the appropriating funds under the TVPA and more generally to funding CPS Agencies and other non-profits who serve this population.

A full discussion of the purposes of society could be the subject of another entire paper, but at a basic level, people come together and organize in different areas of society to meet our collective needs and to help individuals who are not otherwise able to protect and care for

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<sup>144</sup> IOFA, *supra* note 1 at 102.

<sup>145</sup> *Id.* at 103.

<sup>146</sup> *Id.* at 113.

<sup>147</sup> Boston and Dallas police departments may provide successful case studies where one point person was assigned to all potential victims of domestic minor sex trafficking to facilitate targeted services and accountability. Shared Hope International, *supra* note 5 at 66.

<sup>148</sup> *See* Brittle, *supra* note 113.

themselves.<sup>149</sup> Where parents are incapable of providing care and protection for their children, society has organized to develop collective means of meeting those needs through State CPS Agencies. This system of collecting taxes and allocating funds to different state and nonprofit institutions to meet common needs in society is part of the basic framework of our country and system of governance. We know from the studies cited throughout this paper that children who are victims of commercial sexual exploitation have extensive needs as a result of experiencing repeated trauma and abuse. But these girls are not lost causes, and despite their sometimes overtly mature and sexual presentation, they are still children in need of care. Until such time as society properly funds and operates the institutions it has created to protect these youth, it will continue to be complicit in trafficking by not properly identifying and treating American children who are victims of child sex trafficking at the hands of pimps. By criminalizing and deprioritizing girls who are actually victims when they come into contact with a state agency, we are not merely allowing them to fall through the cracks, we are pushing them through the cracks and back to their traffickers, allowing the trafficking to continue and helping the pimp, if not actively “pimping” ourselves.

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<sup>149</sup> Lee J. Strang, *The Clash of Rival and Incompatible Philosophical Traditions Within Constitutional Interpretation: Originalism Grounded in Central Western Philosophical Tradition*, 28 HARV. 1 L. & PUB. POL’Y 909, 922 (2005).